

Office of the  
City Attorney

August 22, 2016

**Via Email and U.S. Mail**

Raymond Johnson, Esq.  
JOHNSON & SEDLACK  
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Action and Environmental Justice  
26785 Camino Seco  
Temecula, CA 92590

Re: 8/11/16 CCAEJ Letter Requesting the City of Riverside Decline to Lift Stop  
Work Order on Riverside Agricultural Park Site  
Our File No. 16-1277

Dear Mr. Johnson:

The City of Riverside ("City") is in receipt of your August 11, 2016 letter ("Letter") written on behalf of the Center for Community Action and Environmental Justice ("CCA EJ"), requesting that the City decline to lift the stop work order concerning the Agricultural Park ("Ag Park") site prior to review under the California Environmental Quality Act ("CEQA"). We have carefully read your Letter and evaluated your request. The City disagrees with your analyses and conclusion that further CEQA review is required, as explained below.

First, it is important that all parties understand that the Department of Toxic Substances Control ("DTSC") is the lead agency for the current Ag Park site cleanup activities. That is stated unequivocally by the DTSC itself in the document you cite in your Letter, the July 2016 "Work Order":

Our agency, the Department of Toxic Substances Control (DTSC), provided lead regulatory oversight for removal of soil contaminated with polychlorinated biphenyls (PCBs) at the Riverside Agricultural Park property, located at 7020 Crest Avenue in the city of Riverside. DTSC is a department within the California Environmental Protection Agency, and is responsible for overseeing environmental activities at sites such as the Riverside Agricultural Park (Ag Park).

Having established that DTSC is the lead agency in this matter, we turn to your concerns that the public be informed, and that measures be adopted to protect the public health. We note that Mr. Peter Garcia, a DTSC Branch Chief, has informed the Ag Park Work Group that:



Based on the significant amount of planning identified above, including a detailed technical analysis with the support of local, state, and federal agencies, and upon consideration of comments and concerns from CCAEJ, the Work Group, and local residents, DTSC believes the excavation plan is protective of public health, and will approve its implementation.

(August 4, 2016 letter from DTSC to Ag Park Work Group.) DTSC's July 28, 2016 responses to CCAEJ's comments also explain that DTSC's actions are protective of public health. It appears from the record that DTSC has carefully and thoroughly addressed CCAEJ's and others' concerns over the current Ag Park cleanup, and is satisfied that the public health is protected.

Regarding your request that the City delay rescission of the June 18, 2015 stop-work notice issued at the Ag Park site, the City is not a responsible agency for the current cleanup, and retains no discretionary approval authority over the Ag Park grading. As explained above, the DTSC is the lead agency, not the City. Furthermore, the terms of the stop-work notice itself explain the ministerial nature of its termination: "All work must cease immediately at Tract 28987 until the Department of Toxic Substances Control concludes their review" (emphasis added). Once DTSC concludes its review, work may resume. There is no discretion on the part of the City for a different result. Because there is no City discretion in rescinding the stop-work notice, a ministerial act, the City cannot impose the subsequent CEQA review you request. As you are aware, CEQA does not apply to ministerial acts. (Pub. Resources Code 21080, subd. (a); 14 Cal. Code Regs. § 15369.)

In your Letter, you discuss Tentative Tract Map 31541 ("TTM 31541"), the related mitigated negative declaration ("MND"), and a lawsuit by the "Friends of Riverside's Hills." Your statement that "the 2006 MND and TTM 31541 approvals were overturned and rescinded by the City in 2007" is incomplete, and omits important parts of the judge's ruling. According to the minute order filed September 24, 2007, the only deficiency in the challenged approvals was the Airport Land Use Compatibility Plan inconsistency. Importantly, Tract Map 28987 and its time extension, and Tract Map 31542, were explicitly upheld. It is therefore a matter of law that TM 28987 and TM 31542 are valid.

Your Letter continues by describing the DTSC cleanup work described in the July 2016 Work Notice, and expressing concern that "the potential environmental impacts of this additional work has never been evaluated." Again, as explained above, the DTSC is the lead agency for the work, not the City. The City has no authority to impose CEQA review on a DTSC project. Your CEQA review concerns would be properly directed at DTSC, not the City.

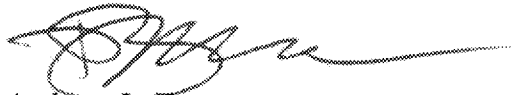
Finally, you argue incorrectly that subsequent CEQA review is required by Public Resources Code Section 21166. CEQA does not impose review on projects which have already

Raymond Johnson, Esq.  
August 22, 2016  
Page 3

been approved, such as a tract map approved in 2003 and explicitly held to be valid by a court. TM 28987 was analyzed properly under CEQA, it is approved and entitled. The City has no discretionary approval authority to impose further CEQA review. There is simply no legal basis.

The City understands that your clients are opposed to the Project, and that you have threatened to sue pursuant to CEQA if the City refuses to additional CEQA review. It is the City's considered opinion that it cannot require additional CEQA review. We regret that we have such differences of opinion, but the City has no discretion in this matter.

Very truly yours,



Anthony L. Beaumon  
Deputy City Attorney

ALB/ch

cc: John A. Russo, City Manager  
John Burnard, Councilmember

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